

EXECUTIVE SECRETARIAT
ROUTING SLIP

TO:

| | | ACTION | INFO | DATE | INITIAL |
|----|------------|--------|------|------|---------|
| 1 | DCI | | | | |
| 2 | DDCI | | X | | |
| 3 | EXDIR | | X | | |
| 4 | D/ICS | | X | | |
| 5 | DDI | | | | |
| 6 | DDA | | | | |
| 7 | DDO | | | | |
| 8 | DDS&T | | | | |
| 9 | Chm/NIC | | | | |
| 10 | GC | | | | |
| 11 | IG | | X | | |
| 12 | Compt | | | | |
| 13 | D/OCA | | | | |
| 14 | D/PAO | | X | | |
| 15 | D/PERS | | | | |
| 16 | D/Ex Staff | | | | |
| 17 | | | | | |
| 18 | ER | | | | |
| 19 | | | | | |
| 20 | | | | | |
| 21 | | | | | |
| 22 | | | | | |

SUSPENSE

Date

Remarks

3637 (10-81)

Executive Secretary

4 Dec '87

Date

STAT



U.S. Department of Justice

[REDACTED]

87-3692x

Federal Bureau of Investigation

Office of the Director

Washington, D.C. 20535

December 1, 1987

Honorable William H. Webster
Director of Central Intelligence
Central Intelligence Agency
Washington, D. C.

STAT

Dear Judge Webster:

By memorandum dated October 23, 1987, [REDACTED] Deputy Director for Legislation, Office of Congressional Affairs, requested the FBI to submit proposals for the preparation of a draft Fiscal Year 1989 Intelligence Authorization Bill. As recently included in the "Central Intelligence Agency and Intelligence Community Proposed Legislative Program for the Second Session of the 100th Congress," Section 100/2-15 continues to have our support. That section provides access for the FBI to Internal Revenue Service records for counterintelligence purposes. We are not recommending proposed Section 100/2-28, an Allowance for the New York Field Division, be included in the 1989 Authorization Bill. As you know, Section 502 of the 1988 Intelligence Authorization Act directs that this issue be jointly studied by the Office of Personnel Management and the FBI. Two new provisions provide authority for the FBI to obtain consumer reports from consumer reporting agencies and information from the Social Security Administration in certain foreign counterintelligence and espionage investigations when it is certified by senior designated Bureau officials that reports and information relate to an agent of a foreign power or are needed in an authorized foreign counterintelligence investigation.

STAT

Attached for each item are sections containing statutory language, report language, changes in existing law, and, where available, a cost analysis.

We are submitting these items in draft form with the understanding changes may be made prior to final presentation to the Office of Management and Budget.

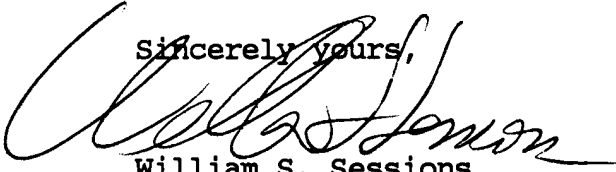


A-104-in

FBI/DOJ

Honorable William H. Webster

If there are any questions regarding any of the attached items please contact Chief Counsel J. Kevin O'Brien or Special Agent John S. Hooks, Jr., Congressional Affairs Office at telephone number 324-4515.

Sincerely yours,

William S. Sessions
Director

Enclosures (3)

Improved Access to Tax Records in Connection
with Counterintelligence Investigations

Statutory Language

Section 6103(i) of Title 26, United State Code is amended by adding at the end thereof the following new paragraph:

" (8) Federal Bureau of Investigation Counterintelligence Activities --Upon a determination by the Attorney General or his designee that there is probable cause to believe that a taxpayer is a foreign power or an agent of a foreign power (as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801)), the return of the taxpayer and return information which relates to such taxpayer shall, upon request for foreign counterintelligence purposes by the Federal Bureau of Investigation approved by the Attorney General, be open (to the extent of the approved request) to inspection by, or disclosure to, the Federal Bureau of Investigation. The Federal Bureau of Investigation is authorized to transfer taxpayer information obtained pursuant to this subsection to another Federal agency or department when it is relevant to foreign counterintelligence matters within the jurisdiction of that agency or department."

Report Language

This provision would provide access by the FBI to tax return information in foreign counterintelligence investigations. Disclosure of tax information by the Internal Revenue Service (IRS) is generally proscribed by Section 6103(a) of Title 26, United States Code. A variety of exceptions to the prohibition on disclosure of tax information are contained in Section 6103. With respect to criminal investigations, tax return information may be released without a court order if the matter pertains to tax administration. Release of a tax return or taxpayer return information needed in the course of a nontax criminal investigation must be authorized by a court order. Title 26, U.S.C., Section 6103(i)(1)(A). Release of return information other than taxpayer return information for use in nontax criminal investigations may be authorized by the Secretary of the Treasury upon receipt of a request from the head of a Federal agency involved in enforcement of Federal criminal statutes. For example, the Director of the FBI may request such information.

Unfortunately, none of the aforementioned provisions provide any access to tax return information in foreign counterintelligence investigations. Access to financial information, including tax returns, is important to investigating espionage activity because recent cases (e.g., Walker, Pelton) have shown that one important motive for espionage can be financial gain. While it is possible to obtain tax return information through a court order for use in a criminal

prosecution, there are instances where access to tax information is an important investigative aid even though criminal prosecution is not possible or desirable. In many of these cases, the national security interest of the United States is better served by convincing a person engaged in espionage to work against the intelligence service of a hostile government rather than prosecuting the individual. In other instances, there may not be enough evidence developed to anticipate going forward with a criminal prosecution. Enactment of this section will enable the FBI to obtain vital information in foreign counter-intelligence investigations not connected with an impending criminal prosecution.

Enactment of this section also will be of vital help to the FBI in preventing the illegal export of high technology items. The buyers and sellers of goods containing advanced technology, the export of which is prohibited, conceal their transactions through a series of small shell corporations. The ability of the FBI to trace the flow of money and make comparisons of losses and earnings in order to establish the fraudulence of the transaction and identify the final recipient of goods will be facilitated with access to tax records of individuals and businesses.

Enactment of this section also will be useful in helping the FBI keep track of certain foreign students who are sponsored by foreign governments. These students are required to file with the IRS Form 2063 (U.S. Departing Alien Income Tax Statement), upon departure. These forms are collected in Philadelphia, Pennsylvania and are important to the FBI as a quick means of verifying the exact date of departure of a student. This information is not readily available from other sources. Consultation with officials of the IRS has determined that this information falls within the definition of taxpayer's return information and, therefore, is available only pursuant to a judicial order. Enactment of this section will allow the FBI access to these records without having to obtain a court order.

In summary, enactment of this section would authorize the FBI access, under proper controls, to tax return and taxpayer information of individuals who are subjects of foreign counterintelligence investigations and would allow for the dissemination of this information to other members of the Intelligence Community. Because the FBI can only obtain an individual's return under this section upon a determination by the Attorney General that there is probable cause to believe that a taxpayer is a foreign power or agent of a foreign power, use of this investigative technique will occur only after substantial information has been gathered about the taxpayer's involvement in espionage or activities of counterintelligence interest.

Change in Existing Law

This Section adds a Subsection to 26 U.S.C. 6103(i).

Cost Analysis

This proposal will allow the FBI to obtain accurate and reliable information not readily available from any other source. There are no known costs associated with the change. In many cases the provision will save a significant expenditure of manpower necessary to obtain the same information from sources other than the IRS. In some cases access to tax records will be the difference in successfully completing an investigation or terminating the investigation due to failure to develop evidence sufficient to prosecute.

Access to Consumer Reports in Connection
With Counterintelligence Investigations

Statutory Language

(A) Section 1681b of Title 15, United States Code, entitled "Permissible Purposes of Consumer Reports," is amended by adding the following new paragraph:

"(4) To the Federal Bureau of Investigation when presented with a request for a consumer report made pursuant to this subsection by the Federal Bureau of Investigation provided that the Director of the Federal Bureau of Investigation, or his designee, certifies in writing to the consumer reporting agency that such records are sought for foreign counterintelligence purposes and that there are specific and articulable facts giving reason to believe the person to whom the requested consumer report relates is an agent of a foreign power as defined in Section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801). No consumer reporting agency, or officer, employee, or agent of such institution shall disclose to any person that the Federal Bureau of Investigation has sought or obtained access to a consumer report under this paragraph."

(B) Section 1681f of Title 15, United States Code, entitled "Disclosures to Government Agencies," is amended by placing "(1)" before the existing paragraph and adding the following new paragraphs:

"(2) Notwithstanding the provision of Section 1681b of this Title, a consumer reporting agency shall furnish identifying information respecting any consumer, limited to his/her name, address, former address, place of employment, or former plans of employment, to a representative of the Federal Bureau of Investigation when presented with a written request signed by the Director of the Federal Bureau of Investigation, or his designee, stating that the information is sought in connection with an authorized foreign counterintelligence investigation.

(3) No consumer reporting agency, or officer, employee, or agent of such institution, shall disclose to any person that the Federal Bureau of Investigation has sought or obtained a consumer report under this section."

Report Language

This proposal seeks to amend the Fair Credit Reporting Act to require consumer reporting agencies to provide information to the Federal Bureau of Investigation in certain foreign counterintelligence investigations. Although the Right to Financial Privacy Act (RFPA) was recently amended to provide the FBI mandatory access to financial records in certain foreign counterintelligence investigations, because consumer reporting

agencies are not subject to the RFPFA this change in the Fair Credit Reporting Act is necessary to provide similar consumer credit information.

The change will provide a means by which the FBI can obtain consumer credit information including current and former addresses and employers when it is certified by the Director that the report relates to an agent of a foreign power or is necessary in connection with an authorized foreign counterintelligence investigation. The provision additionally prohibits disclosure of the fact the request was made or information obtained.

Change in Existing Law

This proposal adds language to subsections 1681b and 1681f of Title 15 of the United States Code. The existing subsection 1681f is renumbered 1681f(1).

Cost Analysis

This change will allow the FBI to obtain accurate reliable information, often unobtainable from any other source. There are no known costs associated with the change. In many cases the provision will save a significant expenditure of man hours necessary to develop similar information from other sources. In other cases, without this provision, investigations will be terminated because insufficient information is available to further identify the subject and/or continue the investigation.

Foreign Counterintelligence Access to
Social Security Information

Statutory Language

Section 1306 of Title 42, United States Code, entitled "Disclosure of Information in Possession of Department of Health and Human Services or Department of Labor," is amended by adding the following new paragraph.

"(f) FBI REQUESTS FOR FOREIGN COUNTERINTELLIGENCE PURPOSES.

Notwithstanding Section 1306(a) or any other provision of law, the Secretary of Health and Human Services, or the Secretary of Labor, as the case may be, shall disclose information in the Secretary's possession relating to the current and prior residences of a named person, when presented with a certification signed by the Director of the Federal Bureau of Investigation, or the Director's designee, stating that:

(1) The information is sought in connection with an authorized foreign counterintelligence investigation; and

(2) There are specific and articulable facts giving reason to believe the person is an agent of a foreign power as defined in Section 101 of the Foreign Intelligence Surveillance Act of 1978 (Title, U.S.C., Section 1801)."

Report Language

This change provides a measure for the Federal Bureau of Investigation to obtain information relating to current and former residence and employment of individuals believed to be acting on behalf of a foreign power. The information obtained under this provision will permit the FBI to locate an agent of a foreign power, obtain historical data on actions by an agent of a foreign power, and in certain cases assist in determining the veracity of an agent of a foreign power. This information is not readily available to the FBI from any single source and is often impossible to obtain through investigation without compromising sources of information or the confidentiality of an investigation.

Change in Existing Law

Title 42, United States Code, Section 1306 is amended by adding a new subsection.

Cost Analysis

This change will allow the FBI to obtain accurate reliable information, often unobtainable from any other source. There are no known costs associated with the change. In many cases the provision will save a significant expenditure of man hours necessary to develop similar information from other sources. In other cases, without this provision, investigations will be terminated because insufficient information is available to further identify the subject and/or continue the investigation.